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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 910

ALLIED CHEMICAL & ALKALI WORKERS OF AMERICA, LOCAL UNION NO. 1, PETITIONER

v.

PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION, ET AL.

No. 961

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

PITTSBURGH PLATE GLASS COMPANY, CHEMICAL DIVISION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (A. 183–200) is reported at 427 F. 2d 936. The decision and order of the National Labor Relations Board (A. 25–53, 9–24) are reported at 177 NLRB No. 114.

JURISDICTION

The judgment of the court of appeals (A. 201) was entered on June 10, 1970. The Board's timely petition for rehearing *en banc* was denied (Judges Edwards and McCree dissenting) on July 31, 1970 (A. 202). The Union's petition for a writ of certiorari was filed on October 27, 1970, and the Board's petition was filed on November 12, 1970.[1] The petitions were granted on February 22, 1971 (A. 203). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTES INVOLVED

The relevant statutory provisions are set forth in the Appendix, *infra*, pp. 35–39.

QUESTION PRESENTED

Whether an employer violates Section 8(a) (5) and (1) of the National Labor Relations Act by refusing to bargain with the statutory barganing representative of his employees concerning mid-term changes in health benefits the employer proposes to negotiate with employees who have retired.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

Since 1949, Local 1, Allied Chemical and Alkali Workers of America (the "Union") has been the exclusive bargaining representative for the employees working at hourly rates of pay in the Barberton, Ohio,

[1] On October 16, 1970, Mr. Justice Stewart extended the Board's time for filing a petition to and including November 16, 1970 (A. 202–203).

facilities of the Pittsburgh Plate Glass Company (A. 26; 4, 8, 110–113). In 1950, the Union and the Company negotiated a contract which included provisions for pensions and a medical insurance plan. At the same time the parties agreed orally that retired employees could participate in the medical plan by contributing the entire cost of the insurance premiums, which would be deducted from their pension benefits. (A. 26; 116–117, 150–151, 172.)

In 1959, during negotiations for a new contract, the parties orally agreed to an increase in the hospitalization benefits available to retired employees; this oral agreement was reduced to writing shortly thereafter (A. 11–12, 26; 108–109, 116–117, 134–135). In 1962, the Company agreed to contribute two dollars per month toward the cost of insurance premiums for employees who retired in the future and elected to participate in the medical plan (A. 12, 27; 56, 117–118, 133, 172).[2] The pension plan was also amended to make 65 the mandatory retirement age (A. 12, 27; 54–56, 118). When the contract was reopened for negotiation in 1964, the Company agreed to increase its monthly contribution to medical insurance from two to four dollars; the increase was available to each participating employee who had retired on or after the effective date of the 1962 contract (A. 12, 27; 120–121, 88). In anticipation of the enactment of Medicare, the

[2] The total cost of the hospital and surgical plan was $11.41 per month for the retiree and his spouse. In addition to paying $2.00 per month toward this cost, the Company agreed to provide future retirees with $2,000 life insurance coverage at no cost to the employee. (A. 56.)

1964 agreement also provided that the Company might rescind the two-dollar increase if a government health program were enacted (A. 88).

Congress enacted Medicare on July 30, 1965, effective July 1, 1966.[3] In November 1965, while the 1964 contract was still in effect, the Union asked the Company to engage in mid-term bargaining for the purpose of negotiating insurance benefits not available under Medicare. The Company did not respond until March 1966; it then stated that, because of the enactment of Medicare, it intended to rescind the two dollars per month increase for retired employees as of July 1, 1966. In addition, the Company stated that it intended to cancel the medical insurance plan for retired employees entirely, because in its opinion the enactment of Medicare made this insurance useless.[4] Instead, the Company stated it would pay the three-dollar per month subscription cost of supplemental Medicare coverage for each retired employee.[5] (A. 12–13, 27–28, 122–127, 134, 145, 155–161, 169, 179–180.)

The Union conceded that the Company had the right under the contract to reduce its monthly con-

[3] P.L. 89–97, 79 Stat. 291, 305, 42 U.S.C. 1395, *et seq.*

[4] The certificate of insurance stated that the plan would not duplicate payments made by other group employers under other insurance plans to which the Company made contributions. The Company considered the Medicare plan to be an insurance plan of another employer. (A. 169.)

[5] Hospital benefits under Medicare are received automatically by any social security annuitant 65 years of age or over. Medical benefits are optional and, at the time herein, required a payment of $3.00 per month for each person. (A. 93; 42 U.S.C. 1395c, 1395r.)

tribution per employee from four to two dollars, but protested the Company's proposal to cancel unilaterally the contract medical plan for retired employees. The Company challenged the Union's right to bargain for retired employees at all. In reply to the Union's questions about the effect of cancellation of the contract plan on pensioners and their wives who were under 65 and not yet eligible for Medicare, the Company stated that it would have to work out a program for their coverage. (A. 14, 28; 125–127, 134, 159–161, 179–180.)

Two days later the Company reconsidered and informed the Union that it would not cancel the medical plan for retired employees. Rather, it would write to each retired employee offering to pay the three dollars per month supplemental Medicare premium if he were to withdraw from the contract medical plan. The Union objected that any change in the negotiated plan was a bargainable matter, which the Company could not put into effect unilaterally. The Company sent the letters to its retired employees the following day. As a result, approximately 15 of 190 retired employees canceled their participation in the contract medical plan. The Union thereupon filed charges with the Board alleging that the Company's conduct constituted an unlawful refusal to bargain. (A. 14–15, 28; 92–101, 127–129, 145–146, 170–171, 174.)

B. THE DECISIONS OF THE BOARD AND THE COURT OF APPEALS

The Board (Member Zagoria dissenting) held that benefits for persons who have already retired consti-

tute a mandatory subject of collective bargaining and that thus the Company's unilateral action changing the benefits violated Section 8(a) (5) and (1) of the Act (A. 25–52).[6] The Board's conclusion rested on two bases: first, that a retiree remains an "employee" for purposes of the Act insofar as his retirement benefits are concerned (A. 30–38); and, second, that the subject of benefits for retired employees vitally affects the terms and conditions of employment of the active employees, and is thus a mandatory subject of bargaining as to them (A. 38–45). The Board also found that the Company's action was a mid-term modification of the existing agreement forbidden by Section 8(d), and hence violated Section 8(a) (5) and (1) for that reason as well (A. 45–46). The Board ordered the Company to cease and desist from the unfair labor practices found; to rescind upon the Union's request any unilaterally instituted adjustment in the health insurance plan for retired employees; and to post and mail appropriate notices (A. 47–48).

The court of appeals denied enforcement of the Board's order (A. 183–200). It held that persons who have already retired are not "employees" within the meaning of Section 8(a)(5), and that improved benefits for retired employees do not vitally affect the terms and conditions of employment of active em-

[6] Accord: *Westinghouse Electric Corp.*, 188 NLRB No. 126 (Chairman Miller dissenting in relevant part); *Union Carbide Corp.*, 187 NLRB No. 10; *Union Carbide Corp.-Linde Div.*, 189 NLRB No. 28. See also *Hooker Chemical Corp.*, 186 NLRB No. 49.

ployees. With respect to the latter issue, the court held that the interests of active employees are sufficiently protected by their right to bargain collectively about their prospective retirement benefits while they are currently employed, and to invoke the contractual grievance procedure or sue under Section 301 of the Labor Management Relations Act (29 U.S.C. 185) for any breach of contract affecting their benefits after retirement (A. 198, 191, n. 9).

SUMMARY OF ARGUMENT

Employers and unions are obligated to bargain collectively about pensions and insurance benefits to be enjoyed by active employees after their retirement. Indeed, a large percentage of union-represented employees are currently working under negotiated pension and health and welfare plans. The Board properly concluded that the Act's mandatory bargaining requirement also imposes a duty on the employer (and the union) to bargain concerning changes in the health benefits which are paid to employees who have already retired.

I

The statutory obligation to bargain, though normally concerned primarily with the working conditions of the employees in the unit represented by the union, also encompasses matters involving individuals outside the unit which have a direct bearing on employees within the unit. See *Local 24, Teamsters* v. *Oliver,* 358 U.S. 283, explained in *United States* v. *Drum,* 368 U.S. 370, 382, n. 26. The interest of the

active members in the health benefits accruing to retirees is sufficiently substantial that the obligation to bargain with respect to "terms and conditions of employment" set forth in Sections 8(a)(5) and 8(d) of the Act embraces these benefits without regard to whether retirees remain "employees" within the meaning of the Act. In short, the benefits accruing to retirees directly affect the "terms and conditions of employment" of the active employees.

Active employees, to insure that their own needs will be met during their retirement years notwithstanding post-retirement inflation or legislative change, may forego certain immediate benefits in order to protect or increase payments to retired employees. Similarly, the prospect that in the event of such changes the bargaining representative may bargain for an upward adjustment of retirees' benefits, may make active employees more willing to reach agreement on the present level of their projected retirement benefits and on such related matters as the mandatory age of retirement. The interests of active and retired employees likewise intertwine in other ways—*e.g.*, where they are included under a single health insurance contract.

The considerations relied on by the court below do not warrant the creation of an artificial barrier between the two classes. Although the union can negotiate a retirement plan for active employees alone and obtain judicial relief for its breach, bargaining is more meaningful, and the possibility of reaching an agreement is enhanced, if the union is able to nego-

tiate also for the retirees. Moreover, employers normally regard retirees' benefits as part of their labor cost, so that these benefits have a direct effect on the benefits for active employees. There is no basis for the court's assumption that the union, if it bargains for retirees, would normally sacrifice their interests in favor of those of the actively employed. Neither the bargaining representative nor the active employees can help but recognize that the active employees of today are the retirees of tomorrow. While conflicts may arise between the two groups, the good faith resolution of such conflicting interests is a normal and necessary part of the bargaining representative's performance of its statutory functions. There is no reason to assume that the retirees—who lack the expertise of the union and the employer in dealing with such a technical subject as health benefits—would fare worse when represented by the union which originally negotiated those benefits than they would if required to negotiate individually with the employer.

II

In any event, retirees' benefits are mandatory subjects of collective bargaining because retirees are "employees" within the meaning of Sections 8(a)(5) and 9(a) of the National Labor Relations Act with respect to their retirement benefits. This conclusion is merely another application of the principle that, in order to carry out the statutory policies, the Act should be broadly construed to include individuals at both ends of the employment spectrum—those who

have arguably not yet become "employees" as well as those whose employee status has allegedly been terminated. Although retirees are ineligible to vote in Board-conducted elections, this is because they do not share a sufficient community of interest with active employees respecting such matters as *current* wages, hours, and working conditions. The Board reasonably concluded that different considerations apply here, since the benefits paid to retirees are part of the return on their investment of a lifetime of active employment.

The conclusion that retired employees are "employees" for purposes of Section 8(a)(5) of the National Labor Relations Act is consistent with the interpretation given Section 302(c)(5) of the Labor Management Relations Act, which provision should be harmonized with Section 8(a)(5). While Section 302 prohibits employer payments to representatives of employees, paragraph (c)(5) exempts payments to "a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer." The courts of appeals have held that the term "employees of such employer"—which is similar to the term "his employees" in Section 8(a)(5)—includes both current and retired employees.

III

The Board's conclusion that the statutory bargaining obligation extends to health benefits for employees who have already retired is consistent with industrial practice. Accordingly, the Board's view "would promote the fundamental purpose of the Act by bringing

a problem of vital concern to labor and management within the framework established by Congress as most conducive to industrial peace." *Fibreboard Paper Products Corp.* v. *National Labor Relations Board,* 379 U.S. 203, 211. The contrary conclusion of the court below undercuts the current industrial practice of subjecting these matters to "the mediatory influence of negotiation" (*ibid.*), and is contrary to the salutary trend accommodating the scope of mandatory bargaining to the changing needs and interests of the parties.

ARGUMENT

INTRODUCTION

Sections 8(a)(5) and 8(d) of the National Labor Relations Act "establish the obligation of the employer and the representative of its employees to bargain with each other in good faith with respect to 'wages, hours, and other terms and conditions of employment' * * *:" *Fibreboard Paper Products Corp.* v. *National Labor Relations Board,* 379 U.S. 203, 210. "The term 'bargain collectively' as used in the Act 'has been considered to absorb and give statutory approval to the philosophy of bargaining as worked out in the labor movement in the United States.'" *National Labor Relations Board* v. *American National Insurance Co.,* 343 U.S. 395, 408, quoting *Telegraphers* v. *Railway Express Agency,* 321 U.S. 342, 346. "Industrial experience is not only reflective of the interests of labor and management in the subject matter but is also indicative of the amenability of such subjects to the collective bargaining process." *Fibreboard, supra,* 379 U.S. at 211.

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Employers and unions are obligated by Section 8(a)(5) and 8(d) of the Act to bargain collectively about pensions and insurance benefits to be enjoyed by active employees after their retirement. *Inland Steel Co.*, 77 NLRB 1, enforced, 170 F. 2d 247 (C.A. 7), certiorari denied on this issue, 336 U.S. 960; see *W. W. Cross & Co.*, 77 NLRB 1162, enforced, 174 F. 2d 875 (C.A. 1). Indeed, a large percentage of union-represented employees are currently working under negotiated pension and health and welfare plans.[7] The question presented here is whether the Board properly concluded that the Act's mandatory bargaining requirement also imposes a duty on the employer (and the union) to bargain concerning changes in the benefits which are paid to employees who have already retired. We contend in Point I below that, without regard to whether retirees remain "employees" within the meaning of the Act, the statutory bargaining obligation embraces the health benefits received by them because such benefits directly affect the "terms and conditions of employment" of

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[7] Social Security Programs in the United States, U.S. Dept. of Health, Education, and Welfare, Social Security Administration (1968), p. 16; Preamble to the Welfare and Pension Plans Disclosure Act, 1958, Sec. 2(a), 72 Stat. 997, 29 U.S.C. 301(a), cited by the Board (A. 30, n. 9).

"By the end of 1966 * * * 14 million [workers in private industry] were covered by negotiated retirement plans. * * * Of the estimated 17.8 million non-government workers under union contracts in 1966, * * * 3 out of 4 [had] retirement plan coverage." Kittner, *Negotiated Health and Retirement Plan Coverage*, 91 Monthly Labor Review (December 1968), p. 24.

the active bargaining unit employees. We further contend in Point II that there is a duty to bargain about such benefits because the retirees do, in fact, remain "employees" within the meaning of the Act insofar as their retirement benefits are concerned. Finally, we urge in Point III that the Board's conclusion that the Act's bargaining obligation encompasses the benefits paid to retirees accords with the practice of collective bargaining and effectuates the policies of the Act.

I

THE NATIONAL LABOR RELATIONS ACT IMPOSES A DUTY TO BARGAIN ABOUT THE HEALTH BENEFITS PAID TO RETIREES BECAUSE THESE BENEFITS DIRECTLY AFFECT THE TERMS AND CONDITIONS OF EMPLOYMENT OF THE ACTIVE EMPLOYEES

The statutory obligation to bargain, though normally concerned primarily with the working conditions of the employees in a particular bargaining unit, also encompasses matters involving individuals outside the unit which have a direct bearing on employees within the unit. See *Local 24, Teamsters* v. *Oliver,* 358 U.S. 283, 362 U.S. 605. As the Court explained in *United States* v. *Drum,* 368 U.S. 370, 382, n. 26, *Oliver* held that the union which represented a bargaining unit including an "overwhelming majority of concededly employed drivers of carrier-owned equipment" was entitled to bargain with the carrier over the minimum rental to be paid owner-drivers of transport vehicles to whom the carrier had subcontracted part of his operation; in reaching this conclusion, it was unnecessary "to determine whether the owner-drivers

were 'employees' protected by the Act, since the establishment of the minimum rental to them was integral to the establishment of a stable wage structure for clearly covered employee-drivers." Similarly, health benefits for the dependents of active employees obviously are mandatory subjects of bargaining, even though the dependents are not themselves employees.[8] Changes in the benefits paid to retirees similarly are a mandatory bargaining subject because they directly affect the terms and conditions of employment of the active employees.

As the Board here noted (A. 38), for "employers, the promise of retirement benefits aids in obtaining good workers, retaining them, and easing their acceptance of retirement."[9] For "active employees, provisions for pension and health benefits after retirement are an integral part of their total compensation" (*ibid.*). See *Inland Steel Co.* v. *National Labor Relations Board, supra,* 170 F. 2d at 253. The actual value of those future benefits to the employee when he becomes entitled to them, however, depends upon many factors which the bargaining parties cannot anticipate

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[8] See also *Curtiss-Wright Corp.* v. *National Labor Relations Board*, 347 F. 2d 61, 70–71 (C.A. 3) (employer required to divulge information with respect to administrative employees, not in the bargaining unit, because "such information was shown to be relevant to the determination of the status of employees as unit employees").

[9] Cf. *Bedford* v. *White*, 106 Colo. 439, 106 P. 2d 469 (statute providing pensions for judges who retired before its enactment serves a public purpose; for such benefits, no less than those paid to judges retiring after enactment, would tend to encourage "an able man with economic doubts" to overcome them and enter "the judicial service," 106 P. 2d at 477).

and over which they have no control. Monetary inflation is one such factor;[10] public law is another. Indeed, the instant case arose because new legislation, Medicare, had unsettled the retirement benefits to which the parties had previously agreed.

Accordingly, active employees, to insure that their own needs will be met when they retire, may forego certain immediate benefits in order to protect or increase payments to retired employees.[11] Indeed, active

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[10] As students of the subject have stated: "A pension plan which cannot be viewed with pride, and under which employees resist retirement, can be worse than no plan. There is not much point in maintaining a poor plan. Consequently, frequent revision during a period of rapidly rising money wages has been regarded as inevitable. * * * [G]ranted that inflation is taking place, there is not much argument that pensions have to keep pace." Slichter, Healy, and Livernash, *The Impact of Collective Bargaining on Management* (Brookings, 1960), p. 395.

[11] Thus, in mid-1956, the Textile Workers Union and the American Viscose Co. increased retirement benefits and provided for the employer's assumption of the full cost of the pension effective June 1, 1956, while postponing a wage increase to July 1957. Skolnick and Zisman, *Growth in Employee-Benefit Plans*, reprinted from the Social Security Bulletin, U.S. Dept. of Health, Education, and Welfare, Social Security Adm'n (March, 1958), p. 12.

As Archibald Cox pointed out in rejecting the contention, in an arbitration proceeding, that the union had violated its fiduciary duty by pressing for larger payments for pensioners instead of concentrating its full bargaining power in support of demands directly benefiting the active employees: "* * * The union representatives and the current work force may well have been looking to the future. Each contract they are able to negotiate upon the principle that the liberalization of pensions should extend to employees who have already retired may help to establish an accepted practice upon which the current employees may benefit after their retirement. Similarly, the union officers and members might believe that it would

employees are certain to be aware, as the Board observed (A. 35), that "[i]n some respects, an employee's retirement from active employment and his separation from the daily association with fellow workers is the very time when he is most vulnerable economically and most needs representation. This is the point at which his economic alternatives are most limited because of his age." Similarly, as the Board noted (A. 39), the prospect that the collective bargaining representative may bargain for an upward adjustment of retired employees' benefits to accommodate unanticipated economic and social changes may make active employees more willing to reach agreement on the present level of their projected retirement benefits and on such related matters as the mandatory age of retirement, which was fixed at 65 by the contractual pension provisions in the present case. Absent such assurance of future representation, the active employees may insist on leaving the level of benefits or the retirement age more flexible, and this, in turn, would make it more difficult to reach an agreement with the employer.

Moreover, active and retired employees are often grouped under a single health insurance contract, as was the case here. In such a combined plan, it is the size and experience of the entire group which determines the rates and benefits. The withdrawal of retired employees from contract coverage is likely to

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solidify and strengthen their organization to provide for the welfare of retired workers who had long held jobs that became part of the bargaining unit." *United Drill & Tool Corp.*, 28 LA 677, 685 (1957).

change the insurance rate for active employees. On the one hand, diminishing the size of the group would tend to increase the rates (A. 39); on the other hand, the withdrawal of the older people, whose medical expenses generally are higher, could reduce rates. But whatever the effect, it is one that the employer and the union would be concerned about in collective bargaining because of its impact upon active employees.

A similar interrelation between active employees and retirees exists, for example, in the funding of pension plans. Thus, since most such plans give the employer many years to reach complete funding, it is generally true that, at the moment an employee retires, the employer will not yet have contributed the full amount necessary to pay his pension for the rest of his life. Periodic review of the financial condition of the pension fund is therefore essential to assure that it will be adequate to provide pension payments as they come due. If, after such review, the union finds that an employer's rate of contribution is too slow or that the investment of pension monies has resulted in a loss, it may, through bargaining, attempt to obtain an additional employer contribution. In determining how much additional employer contribution is needed, the union must necessarily take into account not only the level of benefits being paid to retirees, but also the amounts which will have to be paid to the active employees who are on the verge of retirement; otherwise, the payments to the retirees will depreciate the active employees' share of the fund. See Brief for the AFL–CIO and the United Auto-

mobile Workers, as *Amicus Curiae,* filed in support of the petition in No. 961, pp. 9–10.

For these reasons, the Board properly concluded (A. 38, 40) that the health benefits paid to retired employees have a direct bearing on the wages, hours, and working conditions of the active employees, and that the movement from active employment to retirement is a natural continuum in which the interests of the actively employed become more and more like those of the retirees as their length of service increases. The court below, rejecting the Board's view, has created an artificial barrier between the two classes. The considerations relied on by the court do not warrant that separation.

1. The court noted (A. 198) that the union can negotiate a retirement plan for active employees alone, and that retirees can protect themselves against violations of that plan by bringing a breach of contract suit under Section 301 of the Labor Management Relations Act (29 U.S.C. 185). But in view of the interrelation between the benefits paid to retirees and the wages and other working conditions of active employees, discussed above, bargaining is more meaningful, and the possibility of reaching an agreement is enhanced, if the union is able to negotiate not only for the active employees but also for the retirees. Active employees, for example, are considerably more likely to place their confidence in an agreement with respect to whose terms the union will continue to represent them than in provisions for whose breach only the Section 301 remedy will be available. Moreover, the

basic assumption of the National Labor Relations Act is that such disputes ordinarily are better settled through collective bargaining than through litigation.

2. Nor is it material that "all employer expenditures, from dividends to capital expenditures, affect, however obliquely, the availability of employer funds for active unit employees" (A. 198). Employers normally regard retirees' benefits as part of their labor cost, so that these costs have a direct, and not merely an oblique, effect on the benefits for active employees. Thus, the retiree health insurance benefits here were originally bargained for as a single labor cost package, and both active employees and retirees were grouped under a single health insurance contract (*supra*, pp. 3–4).

3. Finally, there is no basis for the court's assumption (A. 200) that the union, if given the right to bargain for retirees, would normally seek to sacrifice their interests in favor of those of the actively employed. The court noted that the retirees here are "honorary union members, who retain no voting power" (*ibid.*).[12] Neither the bargaining representative nor the active employees, however, can help but recognize that the active employees of today are the retirees of tomorrow—indeed, such a realization undoubtedly underlies the widespread industrial practice of bargaining about benefits of those who have already retired (*infra*, pp. 27–29), and explains the vigor-

[12] Retirees do not vote in Board elections (see *infra*, pp. 24–25). And, under the rules of the Union, they may attend union meetings but are not eligible to vote on ratification of the contract negotiated by the Union (A. 140).

ous interest which the Union has taken in this case. While conflicts may arise between the two groups, the good faith resolution of such conflicting interests is a normal and necessary part of the bargaining representative's performance of its statutory functions. See *Vaca* v. *Sipes,* 386 U.S. 171, 177–178; *National Labor Relations Board* v. *Allis-Chalmers Mfg. Co.,* 388 U.S. 175, 180–181.

The union owes a duty of fair representation to all the employees for whom it is the exclusive bargaining representative, irrespective of whether they are members of the union, and this duty extends beyond the employees immediately in the unit. See *Bro. of Railroad Trainmen* v. *Howard,* 343 U.S. 768; *Dillard* v. *Chesapeake & Ohio Ry Co.,* 199 F. 2d 948 (C.A. 4); *Houston Maritime Assoc.,* 168 NLRB 615, 617, 625–626, enforcement denied on other grounds, 426 F. 2d 584 (C.A. 5).

The Union represented the retirees here in several important respects, and there is no showing that such representation was unfair or inadequate.[13] Indeed, it is contrary to reason to assume that the retirees—who lack the experience of the union and the employer in dealing with such a technical subject—would fare worse with respect to changes in retirement benefits when represented by the union which originally negotiated those benefits than they would if they were required to bargain individually with the employer.

[13] The Company's pension agreement permits the Union to pursue through appeal stages and into arbitration any differences between the Company and a retiree concerning his age, years of service, the cause of his disability, and other related matters (A. 81–82).

The Company contends (Opposition to Pet. in No. 961, pp. 13–14) that the Board's position would lead to the breakdown of the unit bargaining principle on which the Act is premised, with the result that "[a] bargaining representative, once certified for a particular unit, could then demand bargaining for excluded classes of employees in the same plant or even other plants * * * operated by the same or even another employer." The retirees, however, are not strangers to the unit. They were formerly active employees and as such were full-fledged members of the unit; upon retirement they receive benefits negotiated for them by the Union that represented them while they were active members of that unit.[14] Moreover, as shown, the benefits received by retirees have a direct impact on the terms and conditions of employment of the active employees in the unit. Accordingly, to require bargaining with respect to changes in the benefits received by retirees does not in any real sense ignore unit lines or create an unreasonable enlargement of the bargaining obligation.

II

IN ADDITION, RETIREES REMAIN THE EMPLOYER'S "EMPLOYEES" WITHIN THE MEANING OF SECTION 8(a)(5) OF THE ACT WITH RESPECT TO THEIR RETIREMENT BENEFITS

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer to refuse to bargain collec-

[14] Contrary to the view of the court below (A. 195), the receipt by retirees of retirement benefits, rather than emphasizing "the finality of their employment severance," shows that they still have a continuing tie with the unit.

tively with the representative of "his employees, subject to the provisions of section 9(a)." Section 9(a), in turn, provides that the representative selected for collective bargaining purposes by a majority of the employees in an appropriate unit shall be the exclusive representative "of all the employees in such unit * * *." The Board found (A. 38), in the alternative, that "retired employees are 'employees'" within the meaning of these provisions and thus that "changes in benefits which are rooted in their years of active employment are encompassed within the bargaining obligations of the Act." [15] This conclusion is supported by established principles and past precedents.

The National Labor Relations Act must be interpreted not technically or narrowly, but so as best to effectuate its purposes. See *National Labor Relations Board* v. *Hearst Publications,* 322 U.S. 111, 129; *Phelps Dodge Corp.* v. *National Labor Relations Board,* 313 U.S. 177, 185–186. "[I]nsights derived from syntactical analyss form a hazardous basis for the explication of major legislative enactments." *Machinists Local* v. *National Labor Relations Board,* 362 U.S. 411, 417, n. 7. To carry out the policies of the Act, the statutory protections have been broadly construed to include individuals at both ends of the employment spectrum—those who have arguably not yet become "employees" as well as those whose active

[15] This quotation from the Board's decision shows that the court below erred in asserting that "the Board made no finding in this case that retirees are employees within the meaning of the Act" (A. 195, n. 14).

employee status has allegedly ended.[16] The Board's conclusion that with respect to retirement benefits retirees are "employees" for purposes of the Act's bargaining provisions is merely another application of this principle.[17]

The court below departed from the underlying policy of the Act in holding that only employees presently on the payroll could be viewed as the employer's em-

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[16] *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U.S. 177 (refusal to hire job applicants unlawful discrimination within the meaning of Section 8(a)(3); backpay and offer of employment an appropriate remedy even though applicants had obtained regular and substantially equivalent employment elsewhere after the discriminatory refusal to hire); *Houston Chapter, Associated General Contractors*, 143 NLRB 409, 411–413, enforced, 349 F. 2d 449 (C.A. 5), certiorari denied, 382 U.S. 1026 (nondiscriminatory union hiring hall a mandatory subject of bargaining, and applicants for employment thereunder are "employees" within the meaning of the Act); *National Labor Relations Board* v. *Local 542, Int'l Union of Operating Engineers*, 331 F. 2d 99, 106–107 (C.A. 3), certiorari denied, 379 U.S. 889 (proscription in Section 8(b)(7) of the Act against picketing to force employer "to recognize or bargain with a labor organization as the representative of *his* employees" (emphasis added) includes recognitional picketing respecting prospective as well as current employees); *Laidlaw Corp.* v. *National Labor Relations Board*, 414 F. 2d 99 (C.A. 7), certiorari denied, 397 U.S. 920 (replaced economic strikers retain their employee status at least to the extent of being entitled to preference for job vacancies that subsequently develop); *Chemrock Corp.*, 151 NLRB 1074 (union entitled to bargain with successor employer, as representative of "his employees" within the meaning of Section 8(a)(5), respecting proposed conditions of employment of truckdrivers employed by predecessor, whom successor refused to hire at their previous rate of pay).

[17] See generally Note, *Retirees in the Collective Bargaining Process: A Critical Review of Pittsburgh Plate Glass Co.* v. *NLRB*, 23 Stan. L. Rev. 519 (1971).

ployees in the bargaining unit. The court reasoned that: "Upon retirement, employees are completely removed from the payroll and seniority lists, and thereafter they perform no services * * *, are paid no wages, are under no restrictions as to other employment or activities, and have no rights or expectations of re-employment. For these reasons, * * * the Board has consistently held that retired employees have no right to vote in representation elections * * *." (A. 195.) The Board, however, correctly concluded:

> Compensation for employment need not be synchronous with the performance of labor. Current services may be rewarded by benefits which arise (or continue) in the future, and past services may be retroactively compensated with additional benefits. * * * The health insurance plan here was negotiated for active employees to be enjoyed upon retirement, and its terms relate back to their active employment. For retired employees, the benefits paid to them in retirement are part of the return on their investment of a lifetime of labor. * * * It would virtually stand the Act on its head to hold that [the retiree's] employer is free to deal with him unilaterally and that the union may not represent him with respect to changes in the very plan which it negotiated for him. [A. 35.]

Board rulings that retired employees are ineligible to participate in Board-conducted elections do not rest, as the court below suggests (A. 195, 196–197), on a determination that retirees are not employees within the meaning of the Act. Rather, they depend on the Board's judgment that retired employees do not share a

sufficient community of interest with active employees respecting such matters as current wages, hours, and working conditions to warrant their participation in the selection of a bargaining representative. As the Board noted, the eligibility of employees to vote in representation elections is not dispositive, in this or other contexts, of their right to be represented in collective negotiations as members of the bargaining unit. Thus, there are inactive employees who remain eligible to vote (*e.g.*, those on military leave or layoff), and active employees who are not eligible (*e.g.*, those hired after the election eligibility date). (A. 32–33.) Cf. *National Labor Relations Board* v. *Hondo Drilling Co.*, 428 F. 2d 943, 945–946 (C.A. 5) (Board properly extended "voting rights not only to those employees actually on the payroll, but also to employees who could reasonably anticipate future employment with the company").[18]

Furthermore, as the Board pointed out (A. 37–38), the conclusion that retired employees are "employees" for purposes of Section 8(a)(5) of the National Labor Relations Act is also consistent with the interpretation given to Section 302(c)(5) of the Labor Man-

[18] The court below relied upon two Board decisions that the agency has overruled: *Taunton Supply Corp.*, 137 NLRB 221, 223 (part-time workers who are social security annuitants excluded from unit), overruled in *Holiday Inns of Oak Ridge*, 176 NLRB No. 124, enforced, 77 LRRM 2128 (C.A. 6), in reliance on *Indianapolis Glove Co.* v. *National Labor Relations Board*, 400 F. 2d 363 (C.A. 6); and *Denver-Colorado Springs-Pueblo Motor Way*, 129 NLRB 1184 (dual-function employee must perform unit tasks more than 50 percent of his time to be included in the unit), overruled in *Berea Publishing Co.*, 140 NLRB 516, 519.

agement Relations Act, 29 U.S.C. 186.[19] Section 302 of the LMRA, which prohibits employer payments to representatives of employees, exempts payments to "a trust fund established by such representative for the sole and exclusive benefit of the employees of such employer" (Section 302(c)(5)). Both the Eighth and the Ninth Circuits have held that the term "employees of such employer" in Section 302(c)(5)—which is similar to the term "his employees" in Section 8(a)(5)—includes both "current employees and persons who were covered current employees but are now retired." *Blassie* v. *Kroger Co.*, 345 F. 2d 58, 70 (C.A. 8); accord: *Local No. 688, Int'l Bro. of Teamsters* v. *Townsend*, 345 F. 2d 77 (C.A. 8), and *Garvison* v. *Jensen*, 355 F. 2d 487 (C.A. 9).[20] Since retirees are employees under Section 302(c)(5), to refuse to regard them as employees for Section 8(a)(5) purposes as well would lead to this anomaly: the union would be entitled to represent retired employees in administering a trust plan, but would not be entitled to represent them under Section 8(a)(5) in negotiating amendments to

[19] The provisions of the NLRA are in Title I of the LMRA. Titles I and III are to be construed as a single harmonious entity. *Boys Markets, Inc.*, v. *Retail Clerks Union, Local 770*, 398 U.S. 235, 242–249; *Int'l Bro. of Electrical Workers* v. *National Labor Relations Board*, 341 U.S. 694, 700–701.

[20] As the court stated in *Blassie*, *supra*, 345 F. 2d at 69: "e. Any plan for the health and economic well-being of employees, whether it be one gratuitously granted or one hammered out by hard bargaining, would normally be expected to embrace the crises of unemployment, retirement, and disability, as well as those of the better times of active employment. * * * The trend of welfare plans toward the inclusion of retired persons is a fact of today's industrial life which needs no documentation here."

the plan (A. 37). Moreover, this anomalous distinction itself would frequently interject into welfare plan negotiations the troublesome threshold question whether particular proposals involved the administration of the written agreement, in which case the union would be entitled to represent retired employees, or its renegotiation, in which case, under the theory of the court below, it would not.[21]

III

THE BOARD'S HOLDING ACCORDS WITH THE PRACTICE OF COLLECTIVE BARGAINING AND EFFECTUATES THE POLICIES OF THE ACT

The Board's conclusion that the bargaining obligation imposed by the National Labor Relations Act extends to health benefits for employees who have already retired is consistent with industrial practice. As the Board pointed out, "[m]any unions and employers now bargain about pension and health benefits

[21] Nor is the propriety of harmonizing Section 8(a)(5) with Section 302(c) diminished by the rationalization of the court below (A. 194) that "[n]ot to regard retirees as employees for the purposes of that section [302(c)] would frustrate the purpose of retirement trusts, which have been designated as mandatory subjects of bargaining, by making distributions to retirees from them illegal." The issue is not whether retirees properly are treated as employees under Section 302(c)(5), but whether it would be anomalous, in view of such treatment, not to view them as employees for collective bargaining purposes.

As the Board further noted (A. 37, n. 25), to hold that retirees are employees for purposes of the National Labor Relations Act, is also consistent with the Internal Revenue Service's view that a benefit plan "is for the exclusive benefit of employees or their beneficiaries [within the meaning of the Revenue Code of 1954, 26 U.S.C. 401] even though it may cover former as well as present employees * * *." Cf. *Blassie* v. *Kroger Co.*, *supra*, 345 F. 2d at 70.

for retired employees, reflecting a 'wide-spread understanding of the law shared in industrial circles and among members of the labor relations bar' " (A. 31, quoting from *United Drill & Tool Corp.*, 28 LA 677, 685, discussed n. 11, *supra.*)[22] Similarly, the brief filed with this Court by the AFL–CIO and the United Automobile Workers lists 20 major contracts (*i.e.*, those covering between 600 and 35,000 employees) executed in 1969 or 1970, which effected changes in benefits to persons already retired. Brief *Amici Curiae* filed in support of the petition in No. 961, pp. 4–5, 17–22. Indeed, in the recent negotiations just concluded with General Motors, "the UAW secured the following major benefits for retirees: (1) an increase of $1 a month per year of service; (2) a plan pursuant to which prescriptions would be filled at a maximum charge of $1 to $2 per prescription; [and] (3) an agreement pursuant to which G.M. would pay Medicare premiums in their entirety." *Id.* at p. 5. Similarly, the United Steelworkers told the court below (*id.* at p. 6):

> In the steel and iron ore industries, improved pension and/or insurance benefits for employees retired resulted from collective bargaining in 1954, 1956, 1960, 1965 and 1968; in the aluminum industry, improvements for those al-

[22] See also S. Rep. No. 404, Part I, 89th Cong., 1st Sess., 23–24, which notes that the Health Insurance for the Aged Act, establishing Medicare, is made applicable both to employees already receiving social security benefits and to future retirees, in accordance with "the same practices * * * often followed under private pension plans; namely, to extend benefit liberalizations to existing pensioners on the rolls when doing so for future pensioners" (see A. 32, n. 13).

> ready retired were gained in 1949, 1956, 1960, 1962, 1965, and 1968; and in the can industry, in 1955, 1959, 1962, 1965 and 1968 * * *.

Thus, the Board's holding that adjustments in retirees' benefits are a mandatory subject of collective bargaining "would promote the fundamental purpose of the Act by bringing a problem of vital concern to labor and management within the framework established by Congress as most conducive to industrial peace." *Fibreboard Paper Products Corp.* v. *National Labor Relations Board, supra,* 379 U.S. at 211. The contrary conclusion of the court below undercuts the current industrial practice of subjecting these matters to "the mediatory influence of negotiation" (*ibid.*), and is contrary to the salutary trend accommodating the scope of mandatory bargaining to the changing needs and interests of the parties. *East Bay Union of Machinists Local 1304* v. *National Labor Relations Board,* 322 F. 2d 411, 414 (C.A.D.C.), affirmed *sub nom. Fibreboard Paper Products Corp.* v. *National Labor Relations Board,* 379 U.S. 203; *Inland Steel Co.* v. *National Labor Relations Board,* 170 F. 2d 247, 254 (C.A. 7), certiorari denied, 336 U.S. 960; *Richfield Oil Corp.* v. *National Labor Relations Board,* 231 F. 2d 717, 723–724 (C.A.D.C.), certiorari denied, 351 U.S. 909.

The facts of this case underscore the appropriateness of resolving disputes over retiree benefits through the processes of collective bargaining. The problem here arose because new legislation, Medicare, unsettled the retirement benefits to which the parties had previously agreed. The Company initially took the

position that the enactment of Medicare rendered the negotiated health insurance plan useless for retirees, and announced that it had decided to make contributions toward their supplemental Medicare coverage instead (*supra,* p. 4). The Company changed its view when the Union pointed out that some pensioners and their wives were not old enough for Medicare coverage (*supra,* p. 5).[23] The Company thereupon decided upon a different accommodation between the negotiated plan and Medicare—namely, giving each individual a choice between the negotiated plan and Company contributions to supplement Medicare coverage—and refused to discuss the issue further with the Union (*supra,* p. 5). If the Company had bargained with the Union—which had already pointed out a major flaw in the Company's initial proposal—the parties might well have reached a different accommodation which was better adjusted to the retirees' needs without being more costly. The likely existence of viable alternatives which, because of the Company's refusal to bargain, were not considered here, is shown by the variety of accommodations which have resulted from collective bargaining by other employers and unions who have been confronted

[23] Indeed, there was a substantial question as to the correctness of the Company's threshold assumption that the nonduplication-of-benefits provision in its negotiated insurance plan was applicable to a government plan such as Medicare (A. 28–29, n. 5; *supra*, p. 4, n. 4).

with similar problems as a result of Medicare.[24] Accordingly, the Board correctly concluded (A. 41):

> With respect to new problems which arise under a health insurance plan for retired employees, collective bargaining is not only a suitable method for exploring different solutions, but it is probably the most rational and effective method. A plan which has its inception in the collaborative process of a labor-management agreement reflects the assumptions, arguments, and aspirations—as well as the compromises—of the parties to that process. While the process of collective bargaining does not guarantee that its agreements will be wise, the process does help to assure the acceptability of those agreements because they were reached through the participation and the commitment of the parties most affected. Moreover, to deny collective bargaining a role in the development of health benefits plans for retired employees might undermine their viability. These private plans provide an important supplement to gov-

[24] The changes adopted have seldom reduced the retirees' total protection (private plans plus Medicare), but, rather, have usually resulted in greater protection. Among the accommodations reached were: retaining the same benefits as for active workers under 65 but reducing them by Medicare benefits; providing benefits different from those provided active workers under 65, reduced in one respect or more by Medicare benefits; supplementing specific Medicare benefits or covering certain services not supplied under Medicare; or combining the several methods. Indeed, many health and insurance plans not only reimburse retirees and their spouses for the cost of part B (optional) Medicare coverage—the option to the existing plan which the Company offered to the retirees here—but also provide health benefits supplemental to Medicare. See Foust, *Effect of Medicare on Privately Bargained Plans*, 19

> ernmental social welfare programs, and an effective method of dispute settlement will contribute to their purposefulness.
>
> * * * * *

For these reasons, the Board was reasonable in holding that the benefits paid to retirees are within the area of mandatory bargaining under the Act and, therefore, that the Company violated Section 8(a)(5) and (1) by refusing to bargain with the Union respecting changes in those benefits. Accordingly, its decision is entitled to stand. "Obviously, classification of bargaining subjects as 'terms or conditions of employment' is a matter concerning which the Board has special expertise." *Local Union No. 189, Amalgamated Meat Cutters* v. *Jewel Tea Co.*, 381 U.S. 676, 685–686. See also *Local No. 207, Int'l. Assoc. of Bridge Workers* v. *Perko*, 373 U.S. 701, 706. Its determination in this area "is to be accepted [by the reviewing court] if it has 'warrant in the record' and a reasonable basis in law." *National Labor Relations Board* v. *Hearst Publications*, 322 U.S. 111, 131.[25]

New York University Conference on Labor (1966), pp. 273–278; Louchheim, *Impact of Medicare and Medicaid in Future Aspects of Benefit Plan Bargaining* (Rutgers, 1967), pp. vii–viii, 10–16; Beier, *Adapting Group Health Insurance to Medicare*, 89 Monthly Labor Review (May 1966), pp. 491–495; Kittner, *Negotiated Health Benefits and Medicare*, 91 Monthly Labor Review (September 1968), pp. 29–34.

[25] Moreover, having agreed with the Union on a contract embodying certain benefits for retired employees, the Company was not free to modify the contract at mid-term, either unilaterally or as the result of bargaining with the individual retirees, without following the procedures set forth in Section 8(d) of the Act, 29 U.S.C. 158(d). *National Labor Relations Board* v. *Huttig Sash & Door Co.*, 377 F. 2d 964, 967–968 (C.A. 8);

CONCLUSION

The judgment of the court of appeals should be reversed, and the case should be remanded to that court with directions to enforce the Board's order.

Respectfully submitted.

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MAY 1971.

National Labor Relations Board v. *Scam Instrument Corp.*, 394 F. 2d 884, 887 (C.A. 7), certiorari denied, 393 U.S. 980. See also *National Labor Relations Board* v. *Katz*, 369 U.S. 736, 743; *J. I. Case Co.* v. *National Labor Relations Board*, 321 U.S. 332, 338–339; *Medo Photo Supply Corp.* v. *National Labor Relations Board*, 321 U.S. 678. Failure to follow these procedures, as the Board held (*supra*, p. 6), independently establishes a violation of Section 8(a)(5).

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be af-

fected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8(a). It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a);

* * * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided,* That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can

be reopened under the provisions of the contract.

* * * * *

SEC. 9(a). Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

Relevant provisions of Title III of the Labor Management Relations Act, 29 U.S.C. 186, are as follows:

SECTION 302(c). The provisions of this section shall not be applicable

* * * * *

(5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, familes, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, to-

gether with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; or (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training program: *Provided,* That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds.[1]

[1] Section 302(c)(6) was added by the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 537, 539, to remove doubts theretofore existing as to apprenticeship and training programs and as to vacation, holiday, severance or similar benefits. H. Rep. No. 741, 86th Cong. 1st Sess., pp. 46–47, II Leg. Hist. of the Labor-Management Reporting and Disclosure Act of 1959, Washington, 1959, pp. 804–805.

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